

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 97-30**

WARNING

Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.

SUBJECT

Applicability of Tennessee taxes to a retail facility which lies on either side of the Tennessee-[STATE A - NOT TENNESSEE] state line.

SCOPE

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the department by the taxpayer. The rulings herein are binding upon the Department and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the Commissioner at any time.

Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;

- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
- (E) The taxpayer directly involved must have acted in good faith in relying upon the ruling; and a retroactive revocation of the ruling must inure to the taxpayer's detriment.

FACTS

[THE TAXPAYER] is planning to construct a retail facility in [CITY], Tennessee. The planned store will encompass [NUMBER] square feet, approximately [NUMBER] square feet of which are in Tennessee. The checkout lanes and cash registers will be in the front of the store, which is in [STATE A - NOT TENNESSEE]. Consumer entrances and exits are on the [STATE A - NOT TENNESSEE] side of the store. The plans show that one corner of the rectangular building will be in Tennessee. Greeting cards and other perishable items will be displayed in the Tennessee part of the store. Some of these departments may have cash registers. The Tennessee area also contains an employee break room, rest rooms, and a conference room.

ISSUES

1. Whether the Taxpayer will be required to register with the Department for the payment of taxes.
2. Whether any of the Taxpayer's sales will be subject to state or local sales tax.
3. Whether any of the Taxpayer's sales will be subject to the business tax.

RULINGS

1. The Taxpayer will be required to register with the Department for sales and use tax, business tax, and franchise, excise tax.
2. Any sales made in the Tennessee part of the store will be subject to state and local sales tax.
3. The Taxpayer will be required to pay business tax based on sales made in the Tennessee part of the store.

ANALYSIS

1. Tenn. Code Ann. § 67-6-601 provides that

(a) Every person desiring to engage in or conduct business as a dealer in this state shall file with the commissioner an application for a “certificate of registration” for each place of business.

(b) Any person who engages in the business of furnishing any of the things or services taxable under this chapter shall likewise apply for and obtain a certificate of registration as provided by this part.

The Taxpayer may have cash registers and/or make sales in the Tennessee part of the store. If the Taxpayer makes sales and conducts business in Tennessee, it will therefore be required to register with the Department for sales and use tax pursuant to Tenn. Code Ann. § 67-6-601.

The engaging in any business activity enumerated in Tenn. Code Ann. § 67-4-708(1) - (3) is a privilege subject to business tax. Tenn. Code Ann. § 67-4-705. Retail sales of food and sales or rental of tangible personal property are specifically subject to tax. Tenn. Code Ann. § 67-4-708(1), (2). If the Taxpayer makes any retail sales in the Tennessee part of the store, the sales will be subject to business tax. Tenn. Code Ann. § 67-4-706. Prior to making sales, the Taxpayer should register with the county clerk with respect to local taxes paid to the county, and with the city official designated as the collector of tax due to the city. Tenn. Code Ann. § 67-4-706(a).

Tennessee also imposes a corporate franchise tax based on the value of assets in Tennessee, and a corporate excise tax based on apportioned net earnings. Tenn. Code Ann. §§ 67-4-806(a) and 67-4-903(a) impose these taxes on “[a]ll corporations . . . organized for profit under the laws of this state or any other state or country and doing business in Tennessee.” Although Tennessee law does not define the term “doing business in Tennessee,” 15 U. S. Code Ann. § 381(a) prohibits the imposition of a net income tax when a taxpayer's only business in the taxing state is the solicitation of sales of tangible goods in interstate commerce.

The Taxpayer’s activities will consist of more than the solicitation of orders in Tennessee. The Taxpayer will maintain property in Tennessee and will conduct business in the Tennessee portion of the store, regardless of whether sales are made in Tennessee. Therefore, the Taxpayer must also register with the Department for franchise, excise taxes.

2. A sale is “any transfer of title or possession.” Tenn. Code Ann. § 67-6-102(24)(A). Sales would normally occur at the cash register where title to the goods transfers from the Taxpayer to the customer. Accordingly, all taxable sales of tangible personal property made in the Tennessee portion of the store are subject to Tennessee state and local sales tax.

The state sales tax rate is on six percent of the sales price of the tangible personal property. Tenn. Code Ann. § 67-6-202. The local option tax rate varies among counties and within municipalities, but is limited to two and three quarters percent of the first sixteen hundred dollars of the sales price of any single article. Tenn. Code Ann. § 67-6-702(a)(1).

3. Conducting business in Tennessee is deemed a privilege upon which each county or incorporated municipality may levy the business tax. Tenn. Code Ann. § 67-6-704(a). If the Taxpayer makes any sales of tangible personal property in the Tennessee portion of the store, such sales will be subject to the business tax.

Caroline R. Krivacka, Tax Counsel

APPROVED:

Ruth E. Johnson, Commissioner

DATE:

7-3-97